

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

i2Way's Request for Declaratory
Ruling before the Wireless
Telecommunications Bureau,
Commercial Wireless Division,
Policy and Rules Branch

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WT Docket No. 02-196

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Comments of Industrial Telecommunications Association, Inc.

The Industrial Telecommunications Association, Inc. (ITA) hereby respectfully submits its comments in response to the Wireless Telecommunications Bureau's (Bureau) *Public Notice* (Notice) in the above-referenced matter.¹ The Notice seeks comment on i2way Corporation's (i2way) *Request for Declaratory Ruling* (Request) on the intent and meaning of the ten-channel limit set forth in Section 90.187(e) of the Commission's rules.² As discussed below, ITA believes that applications with more than ten frequencies and applications for additional channels, when the original frequencies have not been constructed should be returned and/or dismissed pursuant to Section 90.187(e) of the Commission's rules.³ ITA further believes that the plain language of the rule does not warrant additional declaratory ruling.

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¹ See Wireless Telecommunications Bureau Seeks Comment on i2way Corporation's Request for Declaratory Ruling Regarding the Ten-Channel Limit of Section 90.187 (e), *Public Notice*, DA 02-1827 (rel. July 29, 2002) (Notice).

² Stating, "no more than 10 channels for trunked operation in the Industrial/Business Pool may be applied for in a single application. Subsequent applications, limited to an additional 10 channels or fewer, must be accompanied by a certification, submitted to the frequency coordinator coordinating the application, that all of the applicant's existing channels authorized for trunked operation have been constructed and placed in operation." See also, 47 C.F.R. § 90.187(e).

³ The Wireless Telecommunications Bureau returned 25 i2way applications for failure to comply with Section 90.187 of the Commission's rules. The Bureau also returned three of i2way's applications (0000509132, 0000519117, and 0000509129) for an invalid emission or ERP's exceeding allowable

I. Statement of Interest

ITA is a Commission-certified frequency advisory committee coordinating in excess of 6,000 applications per year on behalf of applicants seeking Commission authority to operate business and industrial/land transportation radio stations on frequency assignments allocated between 30-900 MHz.

ITA enjoys the support of a membership including more than 3,500 licensed two-way land mobile radio communications users, private mobile radio service (PMRS) oriented radio dealer organizations, and the following trade associations:

- Alliance of Motion Picture and Television Producers
- Aeronautical Radio, Inc.
- Associated Builders & Contractors, Inc.
- Florida Citrus Processors Association
- Florida Fruit & Vegetable Association
- National Mining Congress
- National Propane Gas Association
- National Ready-Mixed Concrete Association
- National Utility Contractors Association
- New England Fuel Institute
- United States Telephone Association

In addition, ITA is affiliated with the following independent market councils: the Council of Independent Communications Suppliers (CICS), the Taxicab & Livery Communications Council (TLCC), the Telephone Maintenance Frequency Advisory Committee (TELFAC), and USMSS, Inc.

II. Background

I2way filed multiple applications seeking ten paired trunked channels in either the 150-174 MHz band or the 450-470 MHz band. The applications were subsequently returned because

limits, in addition to non-compliance with Section 90.187 of the Commission's rules. Furthermore, two of i2way's applications (0000622895 and 0000507349) were dismissed because they lacked the required amendment within 60 days of the return letter. Return and dismissal letters may be found on the ULS database on the FCC website as attachments to the appropriate file numbers.

they either did not comply with Section 90.187 of the Commission's rules or the Commission sought certification that the applications complied with Section 90.187(e).⁴ On June 7, 2002, i2way submitted its Request seeking clarification of the Commission's rule regarding a ten-channel limit for operations in the Industrial/Business Pool in the bands between 150 MHz and 512 MHz. On July 29, 2002, the Bureau released a *Public Notice* seeking comment on i2way's Request.⁵

III. Discussion

Due to the limited quantity and high demand of spectrum, the reliance our industry has on shared spectrum makes spectrum efficiency of utmost concern. The availability of usable spectrum directly impacts the ability of private land mobile licenses to operate efficiently in their designated spectrum.⁶ The Commission itself has recognized the importance of access to private land mobile radio (PLMR) spectrum to achieve maximum efficiency in this shared environment. Currently, the Commission is administering a spectrum audit of the PLMR bands.⁷ From the results of the audit thus far, non-constructed or non-operational licenses are not anomalies; hence, the importance of rules such as Section 90.187, to further the goal of spectrum efficiency have been clearly demonstrated.⁸ The Commission also opened access to shared spectrum in the

⁴ Notice, p 1.

⁵ Notice.

⁶ See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignments Policies of the Private Land Mobile Services, *Third Memorandum Opinion and Order* (FCC 99-138), PR Docket No. 92-235, (rel. July 1, 1999) p 11 (MO&O).

⁷ See Wireless Telecommunications Bureau Announces Commencement of an Audit of the Construction and Operational Status of Private Land Mobile Radio Stations, *Public Notice*, DA 01-1575 (rel. Aug. 1, 2001).

⁸ FCC Staff Report on NTIA's Study of Current and Future Spectrum Use by the Energy, Water and Railroad Industries, *Staff Report*, (rel. July 30, 2002) p 11, stating that "since the start of the audit, over 27,000 PLMRS licenses below 512 MHz have been returned or canceled as a result of the audit."

Second Report & Order in the “refarming” proceeding.⁹ The Commission decided that consolidation of PLMR services into two pools of eligible users would promote the most efficient use of the spectrum. As shown above, the goal of promoting spectrum efficiency by maximizing availability of spectrum was important to the Commission five years ago and it remains just as important today.

Granting authorizations without certification that prior granted licenses are not constructed or operational on the same system, in the same market, would be contradictory to the Commission’s goal of spectrum efficiency. I2way, in its Request, states it is not possible for them to “warehouse” shared spectrum.¹⁰ While i2way may not be “warehousing” shared spectrum, applications for additional channels could prohibit other trunked systems from operating in the regions sought for operation by i2way.¹¹ Granting all of these applications without following the required procedures could hinder the development of centralized trunking, not only in one area, but in urbanized areas throughout the country. The Commission has stated, “a user that continues to employ spectrally inefficient equipment, when more efficient alternatives are available, is harming other users with whom it is sharing the frequencies in these bands.”¹² In the instant case, a desire to license more channels on a system that is not operational or constructed, not only harms other users, but also prevents users from having the opportunity to operate more efficiently. To further maximize the efficient use of shared spectrum, applications

⁹ See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignments Policies of the Private Land Mobile Services, *Second Report and Order*, PR Docket No. 92-235 (rel. March 12, 1997) p 3.

¹⁰ Request p 7.

¹¹ Request p 2, stating “[w]hen i2way’s system is fully deployed, it will provide effective two-way communications in virtually all major urban area of the country.”

¹² See Implementation of Section 309(j) and 337 of the Communications Act of 1934 as Amended, Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies Below 800 MHz and Petition for Rule Making of the American Mobile Telecommunications Association, *Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 99-87 (rel. Nov. 20, 2000) p 65 (R&O).

seeking more than ten channels without construction certification should not receive a waiver of Section 90.187(e) of the Commission's rules, as such an action would be contradictory to the public interest.¹³

The intent behind Section 90.187(e) is plainly stated by the Commission in its *Third Memorandum Opinion and Order* (MO&O) in the "refarming" proceeding.¹⁴ The Commission states, "we conclude that the maximum number of channels that may initially be requested for any given trunked system is ten. We note that such a limit would not preclude an applicant from requesting additional channels in subsequent applications."¹⁵ The Commission further explains that future requests for additional channels are not prohibited, as long as a certification that previously authorized licenses are constructed and operational is provided.¹⁶ ITA does not see any need for clarification of the rule. Simply stated, a system operating pursuant to a previously granted license needs to be constructed and operating within the parameters of its license to apply for additional channels in its geographic area.¹⁷ Furthermore, ITA believes submitting multiple applications in the same time frame, each for ten channels, should not be granted because it could circumvent Section 90.187(e)'s requirement that certification be provided illustrating that previously granted licenses are constructed and operational.¹⁸

¹³ 47 C.F.R. § 90.187(e).

¹⁴ MO&O.

¹⁵ MO&O p 11.

¹⁶ MO&O p 11.

¹⁷ Request p 3. While seven of i2way's applications were returned (0000509132, 0000509136, 0000527643, 0000507464, 0000515072, 0000507461, 0000507386) because previously granted licenses were not constructed or operational, the rules will permit i2way to apply for additional frequencies after certification that its previously licensed channels are constructed. Return letters may be found on the ULS database on the FCC website as attachments to the appropriate file numbers.

¹⁸ 47 C.F.R. § 90.187(e).

IV. Conclusion

For reasons explained above, ITA does not see any need for further explanation of the rules as they are written and believes a waiver of the operational and construction requirements in Section 90.187(e) for obtaining additional channels on its systems in this Request should not be granted. After the applicant has demonstrated that the licenses previously granted adhere to the regulations laid out in Section 90.187(e) of the Commission's rules, then it will be in a better position to apply for additional channels. All applicants should be required to comply with Section 90.187(e), not only to preserve the legitimacy of the rules and further spectrum efficiency, but also to promote the integrity of the PLMR service and advance the public interest.

Respectfully submitted,

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